

SCOTT & WHITE MEMORIAL
HOSPITAL,

Plaintiff,

v.

AETNA HEALTH HOLDINGS, LLC, AS
SUCCESSOR BY MERGER TO
COVENTRY HEALTH CARE, INC.,
COVENTRY HEALTH CARE
NATIONAL NETWORK, INC.,
COVENTRY HEALTH AND LIFE
INSURANCE COMPANY, FIRST
HEALTH GROUP CORP., ARM LTD.,
RON PHILEMONOFF, AS TRUSTEE
FOR THE TANADGUSIX
CORPORATION HEALTH & WELFARE
TRUST, JULIANNA SHANE, AS
TRUSTEE FOR THE TANADGUSIX
CORPORATION HEALTH & WELFARE
TRUST, and ROBERT DEAN HUGHES,
AS TRUSTEE FOR THE TANADGUSIX
CORPORATION HEALTH & WELFARE
TRUST,

Defendants.

**PLAINTIFF’S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO (1) FILE
SURREPLY TO DEFENDANT ARM LTD.’S MOTION TO DISMISS; AND (2) FILE
SURREPLY UNDER SEAL**

1

1. Regrettably, Scott & White is forced to file this reply in order to correct the mischaracterization of Scott & White's and ARM's counsels' conference on Scott & White's Motion for Leave to (1) File a Surreply to Defendant ARM Ltd.'s Motion to Dismiss; and (2) File its Surreply Under Seal [ECF. 34] ("Motion for Leave"). While Scott & White did conference with ARM's counsel on August 30, 2017, it did not "object[] to ARM's request that it be permitted to file a response to the Surreply." Resp. to Mot. for Leave at 2.

2. Rather, after ARM made its consent to Scott & White's Surreply conditional on Scott & White providing a blanket consent to a sur-sur-reply to be filed on or before September 13, 2017, counsel for Scott & White refused to consent without first having an opportunity to review a draft of any sur-sur-reply.¹ Scott & White was unwilling to put itself in the position of giving ARM carte blanche to file any sur-sur-reply, including one that again improperly raised new arguments.

3. Scott & White's reservations against ARM's conditional consent proposal are valid. While a movant is generally entitled to the last word, equity requires that the nonmovant have a fair opportunity to address arguments raised by the movant. Scott & White understands that, as the movant, there may be points raised in Scott & White's Surreply that ARM feels warrant a response. However, the very reason Scott & White was forced to file its Surreply was because ARM raised brand new arguments in its Reply in support of its Motion to Dismiss. ARM cannot be permitted to use reply briefs to raise new arguments in perpetuity; it is for this reason that counsel for Scott & White could not blindly consent to a prospective sur-sur-reply without any opportunity to review and ensure that the sur-sur-reply did not contain new arguments.

¹ Scott & White offered to provide a draft of its Surreply to ARM before filing to allow ARM to review and advise whether ARM could consent to Scott & White filing the Surreply unopposed.

4. Accordingly, Scott & White requests that, should ARM be permitted to file a sur-reply, it is prohibited from raising new arguments and limited to responding to arguments made in Scott & White's Surreply.

Dated: September 1, 2017

Respectfully submitted,

By: /s/ Shea R. Haass

Jeff Cody

Texas Bar No. 04468960

Shea R. Haass

Texas Bar No. 24055609

NORTON ROSE FULBRIGHT U.S. LLP

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201

Telephone: (214) 855-8000

Facsimile: (214) 855-8200

*Attorneys for Plaintiff Scott & White Memorial
Hospital*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service in compliance with Local Rule CV-5(b) are being served on this 1st day of September, 2017, with a notice of electronic filing of the foregoing via the Court's CM/ECF system in compliance with Federal Rule of Civil Procedure 5 and Local Rule 5.

/s/ Shea R. Haass

Shea R. Haass